

REMARKS/ARGUMENTS

This Amendment is being filed in response to the second, non-final Official Action of October 1, 2007. The second Official Action no longer rejects Claims 1 and 8 under the judicially-created doctrine of double patenting in view of U.S. Patent Application No. 10/758,854; and no longer rejects Claims 1, 3-5, 7-8, 10-12, 14-15, 17-19 and 21 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,096,247 to Jayam et al. Nonetheless, the Official Action objects to various ones of pending Claims 1-21 for including recitations “configured to” or “adapted to,” which are allegedly not positive recitations. As explained below, Applicants respectfully disagree and submit that the aforementioned language is perfectly acceptable claim language. Nonetheless, to maintain uniformity between the claims, Applicants have amended various ones of the pending claims to replace “adapted to” recitations with “configured to” recitations. In view of the amended claims and the remarks presented herein, Applicants respectfully request reconsideration and allowance of all of the pending claims of the present application.

As indicated above, Applicants respectfully submit that functional language, such as “configured to” and “adapted to,” is definite and acceptable claim language. Section 2173.05(g) of the MPEP defines a functional limitation as “an attempt to define something by what it does, rather than what it is (e.g., as evidenced by its specific structure or specific ingredients).” In this regard, a functional limitation is often used in association with an element to “define a particular capability or purpose that is served by the recited element, ingredient or step.” *Id.* More particularly, the Court of Customs and Patent Appeals (predecessor to the Court of Appeals for the Federal Circuit) has held that the limitations “adapted to be fitted,” “adapted to be affixed” and “adapted to be positioned,” “serve to precisely define present structural attributes of interrelated component parts of the claimed assembly.” MPEP § 2173.05(g), *citing In re Venezia*, 530 F.2d 956 (C.C.P.A. 1976) (emphasis added).

Notwithstanding the foregoing, to expedite prosecution of the present application, Applicants have amended a number of the claims of the present application to remove the “adapted to” language. More particularly, Applicants have amended a number of the claims to include components “configured to” perform various functions. In this regard, Applicants note

that it has been held that an apparatus configured (e.g., programmed) to perform various steps or functions creates a new apparatus. *See In re Alappat*, 33 F.3d 1526, 1545 (Fed. Cir. 1994); and *see id.* at 1569-1570 (Newman, concurring) (“Alappat’s rasterizer is an electronic device for displaying a smooth waveform by selective illumination of pixels. The Alappat rasterizer operates by performing a sequence of steps in accordance with instructions that are generated electronically. ... The structure resides in the configuration by which the device operates, as [the majority] has explained, and is independent of how that configuration is provided.”) (emphasis added).

Applicants therefore respectfully submit that to the extent the claims of the present application include structure positively performing various functions, or include components configured to perform various functions, those limitations must be evaluated and considered like any other claim limitation, and that to anticipate such limitations, the prior art must explicitly or inherently disclose those limitations. And for at least the foregoing reasons, Applicants respectfully submit that the objection to various ones of Claims 1-21 is overcome.

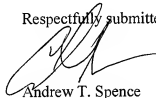
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CONCLUSION

In view of the amended claims and the remarks presented above, Applicants respectfully submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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